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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kevin Retlich	§	Group Art Unit: 2178
Serial No.: 09/672,935	§	Examiner: Stork, Kyle R.
Filed: September 28, 2000	§	
For: MULTILINGUISTIC INDUSTRIAL CONTROL AND MONITORING SYSTEM	§	Atty. Docket: ALBR:0088/YOD/EUB 00AB191

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May 25, 2006 — Date
Stephanie Shamgar

APPEAL BRIEF PURSUANT TO 37 C.F.R. §§ 41.31 AND 41.37

This Appeal Brief is being filed in furtherance to the Notice of Appeal mailed on March 23, 2006, and received by the Patent Office on March 28, 2006.

The Commissioner is authorized to charge the requisite fee of $500.00 for this Appeal Brief, and any additional fees which may be necessary to advance prosecution of the present application, to Deposit Account No. 01-0857, Order No. 00AB191/YOD (ALBR:0088). Further, in accordance with 37 C.F.R. § 1.136, Appellant hereby provides a general authorization to treat this and any future reply requiring an extension of time as incorporating a request therefor. Furthermore, Appellant authorizes the Commissioner to charge the appropriate fee for any extension of time to Deposit Account No. 01-0857, Order No. 00AB191/YOD (ALBR:0088).

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1. REAL PARTY IN INTEREST

The real party in interest is Rockwell Technologies, LLC, the Assignee of the above-referenced application by virtue of the Assignment recorded at reel 011166, frame 0383, and recorded on September 28, 2000. Rockwell Technologies, LLC, the Assignee of the above-referenced application as evidenced by the document mentioned above, will be directly affected by the Board's decision in the pending appeal.

2. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any other appeals or interferences related to this appeal. The undersigned is Appellant's legal representative in this appeal.

3. STATUS OF CLAIMS

Claims 1-28 are currently pending, are currently under final rejection, and, thus, are the subject of this appeal.

4. STATUS OF AMENDMENTS

The instant claims have not been amended subsequent to the Final Office Action mailed December 23, 2005. Consequently, there are no outstanding amendments to be considered by the Board.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates generally to the field of control and monitoring systems. *See* Application, page 1, lines 6-7. More specifically, the present invention relates to a novel technique for allowing multi-lingual, real-time representations of monitored devices and related parameter data. *See id.* at page 1, lines 7-10. The present application contains three independent claims, namely claims 1, 9, and 20, all of which have been improperly rejected and, thus, subject to this appeal. The subject matter of these claims is summarized below.

With regard to the aspect of the invention set forth in independent claim 1, discussions of the recited features of claim 1 can be found at least in the below cited locations of the specification and drawings. By way of example, an embodiment in accordance with the present invention relates to a control and monitoring system (e.g., 10) including a plurality of control and monitoring components (e.g., 32) coupled to a monitoring station (e.g., 18) via a data network (e.g., 14). *See, e.g., id.* at page 5, lines 4-16; page 6, lines 21-22; FIG. 1. The system includes a database (e.g., 96) having component data (e.g., 98) descriptive of the components and a plurality of language fields including textual labels (e.g., 154) for component data presentations translated into a plurality of languages. *See, e.g., id.* at page 10, line 27 – page 11, line 12; page 16, lines 22-29; page 18, line 24 – page 19, line 22; FIGS. 4-5. The system also includes a plurality of monitoring screens (e.g., 138) viewable on the monitoring station. *See, e.g., id.* at page 15, lines 24-26; FIGS. 8-13. The monitoring screens, in turn, include representations of component designations (e.g., 146, 162) and component status parameters (e.g., 148) based upon monitored data collected by the monitoring station via the data network from the components in which identifying component data (e.g., 80, 100) is stored. *See, e.g., id.* at page 9, lines 13-24; page 11, lines 15-22; page 16, lines 4-20; page 17, lines 11-13. The monitoring screens also include textual labels (e.g., 152) for the representations. *See, e.g., id.* at page 16, lines 16-20. The monitoring station is configured to build a view (e.g., 136) of the components in real-time based upon the identifying component data and to access textual labels (e.g., 154) in a desired language from the database for display in the monitoring screens based upon the identifying component data collected from the component. *See, e.g., id.* at page 14, lines 5-24; page 15, lines 19-26; page 16, lines 22-29; page 18, line 24 – page 19, line 22.

With respect to the aspect of the invention set forth in independent claim 9, discussions of the recited features of claim 9 can be found at least in the below cited locations of the specification and drawings. By way of example, an embodiment in accordance with the present invention relates to an industrial control and monitoring system (e.g., 10) having a plurality of control and monitoring components (e.g., 32)

configured to control or monitor application of electrical power to a load, and including at least data (e.g., 80, 100) identifying the components stored in the respective components. *See, e.g., id.* at page 5, lines 4-13; page 6, lines 21-22; page 9, lines 13-24; page 11, lines 15-22; FIG. 1. Further, the system includes a data network (e.g., 14) coupled to the components for accessing parameter and identity data (e.g., 100) from the components. *See, e.g., id.* at page 5, lines 4-6; page 9, lines 21-24; page 11, lines 15-22; FIG. 1. The system also includes a database (e.g., 96) having component data (e.g., 98) descriptive of the components and a plurality of language fields including textual labels (e.g., 154) for component data presentations translated into a plurality of languages. *See, e.g., id.* at page 10, line 27 – page 11, line 12; page 16, lines 22-29; page 18, line 24 – page 19, line 22; FIGS. 4-5. Additionally, the recited system includes a monitoring station (e.g., 18) coupled to the data network and configured to access the parameter data and the identifying data from the components, as well as a plurality of monitoring representations (e.g., 136) built in real-time based upon the identifying data and viewable on the monitoring station and including data about components and component status parameters based upon the parameter data, the representations including textual labels (e.g., 152) from the database in a desired language from the plurality of languages for display in the monitoring screens. *See, e.g., id.* at page 5, lines 15-16; page 15, lines 19-26; page 16, lines 16-20; page 18, line 24 – page 19, line 22; FIGS. 8-13.

Regarding the aspect of the invention set forth in independent claim 16, discussions of the recited features of claim 16 can be found at least in the below cited locations of the specification and drawings. By way of example, an embodiment in accordance with the present invention relates to a method for monitoring the status of a system (e.g., 10, 12) having a plurality of networked electrical components (e.g., 32). *See, e.g., id.* at page 5, lines 4-10; page 6, lines 21-22; FIG. 1. The method includes accessing (e.g., 238) component status and identity data (e.g., 100) from a plurality of electrical components (e.g., 32) of a control and monitoring system (e.g., 10) via a data network (e.g., 14), each component storing its respective identity data. *See, e.g., id.* at page 5, lines 4-6; page 6, lines 21-22; page 9, lines 21-24; page 11, lines 5-25; page 23, lines 21-24; FIG. 1.

The method also includes accessing textual labels (e.g., 154) corresponding to the component status data from a system database (e.g., 96), the database including translations of the textual labels in a plurality of languages and component descriptions for the components. *See, e.g., id.* at page 10, line 27 – page 11, line 12; page 16, lines 22-29; page 18, line 24 – page 19, line 22; FIGS. 4-5. Further, the method includes displaying a plurality of monitoring representations (e.g., 136) for the components, built in real-time based on the status and identity data, including presentations of component status data (e.g., 148) and textual labels (e.g., 152) in a desired language of the plurality of languages accessed from the database. *See, e.g., id.* at page 15, lines 19-26; page 16, lines 13-20; page 18, line 24 – page 19, line 22; FIGS. 8-13.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

First Ground of Rejection for Review on Appeal:

Appellant respectfully urges the Board to review and reverse the Examiner's first ground of rejection in which the Examiner rejected claims 9-12, 16-20, 22-24, and 26-28 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,526,268 to Tkacs et al. ("the Tkacs et al. reference") in view of U.S. Patent No. 4,916,610 to Bapat ("the Bapat reference") and U.S. Patent No. 6,151,625 to Swales et al. ("the Swales et al. reference").

Second Ground of Rejection for Review on Appeal:

Appellant respectfully urges the Board to review and reverse the Examiner's third ground of rejection in which the Examiner rejected claims 1-7 under 35 U.S.C. § 103(a) as unpatentable over the Tkacs et al. reference in view of the Bapat and Swales et al. references.

Third Ground of Rejection for Review on Appeal:

Appellant respectfully urges the Board to review and reverse the Examiner's second ground of rejection in which the Examiner rejected claims 8 and 21 under 35 U.S.C. § 103(a) as unpatentable over the Tkacs et al. reference in view of the Bapat reference and U.S. Patent No. 6,212,491 to Bargh et al. ("the Bargh et al. reference").

Fourth Ground of Rejection for Review on Appeal:

Appellant respectfully urges the Board to review and reverse the Examiner's fourth ground of rejection in which the Examiner rejected claims 13-15 and 25 under 35 U.S.C. § 103(a) as unpatentable over the Tkacs et al. reference in view of the Bapat and Swales et al. references.

7. ARGUMENT

As discussed in detail below, the Examiner has improperly rejected the pending claims. Further, the Examiner has misapplied long-standing and binding legal precedents and principles in rejecting the claims under § 103. Accordingly, Appellant respectfully requests full and favorable consideration by the Board, as Appellant strongly believes that claims 1-28 are currently in condition for allowance.

A. Ground of Rejection No. 1:

The Examiner rejected claims 9-12, 16-20, 22-24, and 26-28 under 35 U.S.C. § 103(a) as being unpatentable over the Tkacs et al. reference in view of the Bapat reference and the Swales et al. reference. Appellant respectfully traverses this rejection.

Legal Precedent

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

Additionally, in presenting a Section 103 rejection, the Examiner must provide *objective evidence*– rather than subjective belief and unknown authority– of the requisite motivation or suggestion to combine or modify the cited references. *See In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). "Broad conclusory statements standing alone are not 'evidence'." *In re Kotzab*, 55 U.S.P.Q. 2d 1314, 1317 (Fed. Cir. 2000). Further, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Thus, when prior art references require a selected combination or modification to render obvious a subsequent invention, there must be some reason for the combination or modification *other than the hindsight* gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination or modification. *See Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). Indeed, the Federal Circuit has warned that the Examiner must not "fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *See In re Dembiczak* 50 U.S.P.Q. 2d 52 (Fed. Cir.1999). (quoting *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303, 313 (Fed. Cir.1983)). Moreover, avoiding hindsight reconstruction is especially important regarding less technologically complex inventions, where the very ease which the invention can be understood may prompt one to employ such hindsight. *See id.*

As discussed above, in determining the differences between the prior art and the claims, the question under Section 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See Stratoflex, Inc. v. Aeroquip Corp.*, 218 U.S.P.Q. 871 (Fed. Cir. 1983). Thus, the Examiner must not look at each element of a claim individually, but rather the claims should be viewed as a tapestry comprising the recited elements. Thus, "it is impermissible, however, to simply engage in a hindsight reconstruction of the claimed invention, *using the applicant's structure as a template* and selecting elements from

references to fill the gaps." *In re Gorman*, 18 U.S.P.Q. 2d 1885, 1888 (Fed. Cir. 1991) (emphasis added). Simply put, what may seem logical to combine in retrospect and after viewing an applicant's invention is not obvious unless the cited references, without benefit of this hindsight, teach what is claimed. *See In re Zurko*, 42 U.S.P.Q.2d 1476, 1479. In summary, a valid Section 103 rejection must articulate and support with objective evidence a line of reasoning that establishes why one of ordinary skill in the art, with no knowledge of an applicant's intention, would make the combination in the manner claimed. *See In re Kotzab*, 55 U.S.P.Q.2d at 1318 (Fed. Cir. 2000).

With the foregoing legal precedent in mind, Appellant respectfully submits that the pending claims are not obvious in view of the cited references, whether taken alone or together.

Deficiencies of the Rejection

As a preliminary matter, Appellant respectfully notes that, in the Office Action, the Examiner set forth the rejection of claims 9-12, 16-20, 22-24, and 26-28 under 35 U.S.C. § 103(a) as "being unpatentable over Tkacs et al. (herein after Tkacs) U.S. Patent No. 5,526,268 filed 5/11/1994 in view of Bapat U.S. Patent No. 4,916,610 filed 10/5/1988 in view Swales et al (herein after Swales) U.S. Patent No. 5,526,268 filed 5/11/1994 in view of Bapat U.S. Patent No, 4,916,610 filed 10/5/1988." Office Action mailed December 23, 2005, page 6 (duplication in original). Although this introductory summary of the rejection mentions the Bapat reference (twice, in fact), the substance of the Examiner's rejection does not appear to present or rely upon this reference. Appellant respectfully notes that this error was also present in the previous Office Action, and that the Examiner was invited to explain the pertinence of the Bapat reference. *See* Response to Office Action filed October 13, 2005, page 11. Accordingly, in view of the substantive remarks provided by the Examiner—portions of which are reproduced below—Appellant addresses the above-listed claims as rejected under Section 103 as obvious in view of the Tkacs et al. and Swales et al. references.

In rejecting independent claims 9 and 20, the Examiner asserted as follows:

> In regard to independent claim 9, Tkacs discloses *a database including component data descriptive of the components and a plurality of language fields including textual labels for component data presentations translated into a plurality of languages* (Tkacs Col 6 Lines 34-39 and 60-63) (Tkacs Col 1 Lines 12-17 Col 4 Lines 29-40) (Tkacs Col 11 Lines 47-49); *and a plurality of monitoring screens viewable on the monitoring station and including representations of component destinations and component status parameters based upon monitored data collected by the monitoring station via the data network, the screens including textual labels for the representations*(Tkacs Col 7 Lines 28-38) (Tkacs Col 11 Lines 45-49) (Tkacs Col 12 Lines 56-60); *wherein the monitoring station is configured to access textual labels in a desired language from the database for display in the monitoring Screens.* (Tkacs Col 6 Lines 34-39) (Tkacs Col 11 Lines 5-7) (Tkacs Col 1 Lines 12-17) (Tkacs Col 7 Lines 28-38)
>
> Tkacs does not specifically mention including at least data identifying the components *stored in the respective components* to build a view of the components in real-time based upon the identifying component data and *based upon the identifying component data collected from the component.* However, Swales mentions that data can be controlled on a real time basis (Swales Col 4 Lines 45-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Swales to Tkacs providing Tkacs the benefit of ensure data is processed in real time to ensure the data is accurate and current.
>
> ....
>
> In regard to independent claim 20, Tkacs discloses accessing component status data (Tkacs Col 6 Lines 60-63) from a plurality of electrical components (Tkacs Col 6 Lines 14-19) of a control and monitoring system (Tkacs Col 7 Lines 28-38) via a data network each component storing its respective identify data (Tkacs Col 1 Lines 29-34); accessing textual labels (Tkacs Col 6 Lines 34-39) corresponding (Tkacs Col 4 Lines 1-5) to the component

> status data (Tkacs Col 4 Lines 35-39) from a system database (Tkacs Col 6 Lines 60-63), the database including translations (Tkacs Col 11 Lines 47-49) of the textual labels (Tkacs Col 6 Lines 34-39) in a plurality of languages and component descriptions for the components (Tkacs Col 6 Lines 60-63 Col 4 Lines 10-67 and Col 5 Lines 1-19) (Tkacs Col 1 Lines 12-17); and displaying a plurality of monitoring representations (Tkacs Col 7 Lines 28-38) for the components including representations (Tkacs Col 4 Lines 41-43) of component status data (Tkacs Col 4 Lines 35-3 9) and textual labels (Tkacs Col 6 Lines 34-39) in a desired language (Tkacs Col 11 Lines 5-7) of the plurality of languages (Tkacs Col 1 Lines 12-17) accessed from the database. (Tkacs Col 6 Lines 60-63)
>
> Tkacs does not specifically mention including at least data identifying the components *stored in the respective components* to build a view of the components in real-time based upon the identifying component data and *based upon the identifying component data collected from the component*. However, Swales mentions that data can be controlled on a real time basis (Swales Col 4 Lines 45-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Swales to Tkacs providing Tkacs the benefit of ensure data is processed in real time to ensure the data is accurate and current.

See Office Action mailed December 23, 2005, pages 6-9 (errors in original, emphasis added).

Appellant, however, respectfully submits that a *prima facie* case of obviousness has not been established. Specifically, as is discussed further below, Appellant respectfully submits the cited references, whether taken alone or in combination, do not disclose all of the features recited in the pending claims. Moreover, even if the cited references are assumed to disclose all of the features recited in the pending claims—which they do not—an *objectively supported* motivation for combining the cited references to reach the pending claims has not been presented. In fact, this lack of an

objectively supported line of reasoning evidences that impermissible hindsight reconstruction has been employed to reject the pending claims.

I. Independent Claim 9 and the Claims Depending Therefrom

By way of example, Appellant respectfully submit that neither the Tkacs et al. reference nor the Swales et al. reference discloses "a plurality of components...including at least *data* identifying the components *stored in the respective components*" (emphasis added), along with a "monitoring station" that builds a view of the components based on this stored identifying data, as recited in independent claim 9. In other words, as extensively discussed both above in the summary of the claimed subject matter and in the specification of the present application, identification data pertaining to a particular component may be stored *locally* within that component. *See, e.g.,* Application, page 9, lines 22-25.

Appellant believes that a short discussion of the operation of an exemplary embodiment of the present invention will be helpful to the Board and the Examiner in the present case. Accordingly, the following discussion of an exemplary embodiment the disclosed system is provided merely for the sake of clarity and understanding. Along these lines, in an exemplary embodiment, polling the *local* memory objects 100 within the components 32 facilitates development of real-time representation of the system. *See, e.g., id.* at page 15, lines 20-24. For example, the monitoring station 18 can execute software that polls the components and that generates user viewable representations based on the identity information gleaned from the *local* memory objects 100 *in the components* 32. *See, e.g., id.* at page 14, lines 5-15. Thus, the monitoring station 18 is capable of developing the appropriate view without requiring prior knowledge of the system 10. For instance, the monitoring station 18 may poll the network and learn that the system 10 includes three relays and, in turn, the monitoring station builds an appropriate view for three relays. At a later point, if one of the relays is removed, a polling of the system 10 would elicit that only two relays are present. In response, the monitoring station 18 would present a view appropriate for two relays. Thus, with the

exemplary embodiment, the views displayed at the monitoring station 18 are commensurate with the actual components in the system at the time the view is built. In other words, the view is a real-time representation of the system, and is based on identity information learned *from the component itself.*

As previously argued, the Tkacs et al. reference describes a device in which the "process diagram" of various components is developed by accessing a memory 44 *wholly independent of the components of the process*. *See* Tkacs et al., col. 6, lines 64-66; col. 6, lines 40-43; *see also* Appellant's RCE and Response to Final Office Action filed May 13, 2005, page 10. Indeed, it appears that that the Examiner concedes this feature, i.e., a plurality of components that include locally stored data pertaining to the respective components, is not disclosed by the Tkacs et al. reference. *See* Office Action mailed December 23, 2005, page 7.

In an attempt to obviate this deficiency, the Examiner relies on the Swales et al. reference—specifically, col. 4, lines 45-47. This section of the Swales et al. reference states as follows:

> Controlling the PLC from a remote HMI, essentially on a real time basis is possible by controlling the data flow through the web server 30.
>
> Associated with the PLC 32 are its application programs 36, dual port memory 38 and Input/Output (I/O) modules 40.

Swales et al., col. 4, lines 43-47. Nothing in this section of the Swales et al. reference teaches that component identification data *is stored in the component*. Moreover, even assuming for the sake of argument, that this passage could, contrary to its plain language, somehow be construed as disclosing a component having self-identifying data stored therein, nothing in the Swales et al. reference teaches, suggests, or even hints that a view can be built from this data. As is discussed further below, this section of the Swales et al. reference only evidences that "real time" control is possible, and utterly fails to disclose

the specific structural elements recited in the present claim and missing from the Tkacs et al. reference, i.e., components that store their respective identification data.

In the most recent Office Action, the Examiner responded to Appellant's previous arguments, stating:

> The applicant argues that Tkacs and Swales fail to disclose "*identifying a component is stored in the component* (page 14)." The examiner respectfully disagrees. Although the applicant believes that Tkacs teaches away from this because the process diagram is generated independently of the components of the process (page 14), the examiner does not view generating a process diagram to be the same as identifying a component. Tkacs discloses identifying a component and obtaining process parameters from a component via a network (column 1, lines 30-45; Figure 7). The examiner believes this satisfies the claimed limitation of "monitored data collected by the monitoring station via the data network from the components in which identifying component data is stored (claim 1, lines 9-10)."

Office Action mailed December 23, 2005, page 12 (emphasis in original). Unfortunately, the Examiner appears to be confused as to the import and meaning of the recitations of the present claim. In the above passage, the Examiner focused on "identifying a component" and contrasted this phrase with "generating a process report." Appellant respectfully notes that the Examiner appears to have mistakenly read and interpreted the phrase "identifying a component" out of context.

Independent claim 9 actually recites components that include "*data* identifying the components stored in the respective components." The Examiner argues that the Tkacs et al. reference discloses the *act* of identifying a component. However, even if this statement by the Examiner is correct, the mere fact that a component is identified is not equivalent to teaching a component having respective identifying information stored on that component. The Examiner has yet to particularly point out a teaching in either the Tkacs et al. or Swales et al. references that could be reasonably equated with the recited

component having locally stored identification data, or a plurality of monitoring representations based on such data obtained from the components.

Thus, in summary, the Swales et al. and Tkacs et al. references, whether taken alone or in combination, fail to disclose each and every feature recited by independent claim 9. Consequently, these cited references fail to establish a *prima facie* case of obviousness with respect to claim 9 or its dependent claims.

Moreover, even assuming, for the sake of argument, that the cited references could be reasonably interpreted as disclosing all of the recited features of independent claim 9, a proper and objectively supported motivation for combination of the cited reference to reach the pending claims has not been articulated. In combining the cited references, the Examiner simply asserts that: "It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Swales to Tkacs providing Tkacs the benefit of ensure [*sic*] data is processed in real time to ensure the data is accurate and current." Office Action mailed December 23, 2005, page 3. Appellant, however, respectfully submits that this motivation is a conclusory statement that is not supported by objective evidence. The section of the Swales et al. reference cited by the Examiner, as discussed above, simply evidences that "real time" control exists. As discussed above, the Swales et al. reference in no way teaches or suggests that component identification data should be stored *in* the respective component, let alone that a view can be developed by pulling data *from* the component. Resultantly, the Swales et al. reference does not provide any objective evidence that supports that Examiner's conclusion. Further, the Tkacs et al. reference itself already teaches a system that monitors and displays the condition and *present values* of a process. *See* Tkacs et al., col. 6, lines 14-29. In short, the system taught by Tkacs et al. *already* processes information in real-time. Any argument that one skilled in the art would be motivated to modify the teachings of a reference to add functionality that is *already present in the reference itself*, is simply spurious and wholly without merit. This lack of objective evidence suggests that the Examiner has employed impermissible hindsight reconstruction to reach the

pending claims. That is, it appears that the Examiner has used Appellant's teachings as a road map to combine the cited references to reach the pending claims.

II. Independent Claim 20 and the Claims Depending Therefrom

Similarly, the cited references do not disclose "accessing component status and identity data from a plurality of electrical components," and "displaying a plurality of monitoring representation for the components, built in real time based on the status and identity data," as recited in claim 20. Instead, as is discussed above, Tkacs et al. disclose that the memory 44, which is independent of the components of the process, stores data. In no way does the Tkacs et al. reference disclose that the components of the process themselves store identity data. Again, all such data, if it exists at all, would be in the memory 44. Thus, it cannot be said that Tkacs et al. discloses accessing such components for the identity data, let alone displaying a representation based on this data, as claimed.

Additionally, the Swales et al. reference does not obviate this deficiency. The Examiner again relies on column 6, lines 45-47 of the Swales et al. reference (which are quoted above with respect to independent claim 9) to buttress the clear deficiencies of the Tkacs et al. reference. However, this section simply notes that "real time" control is possible, without any suggestion or teaching regarding the specific elements presently discussed. As a result, the Swales et al. reference fails to obviate the deficiencies of the Tkacs et al. reference.

Each and every recited detail of a claim must be considered and, upon such consideration, it is clear that the cited references do not disclose *all of the recited features* of independent claim 20. For this reason alone, the Tkacs et al. and Swales et al. references collectively fail to support a *prima facie* showing of obviousness with respect to claim 20 and its dependent claims. Additionally, the Examiner has yet to provide any objective evidence as to why one skilled in the art would be motivated to pick and choose particular aspects from the cited references and combine these aspects in a unique manner

to reach the present claims. Still further, as noted above with respect to claim 9, the Examiner's purported motivation ultimately is derived from a mistaken belief that it would be obvious to incorporate a teaching of the Swales et al. reference with the Tkacs et al. system to add functionality that one skilled in the art would recognize as *already present* in the Tkacs et al. reference. While the Examiner may have done so inadvertently, based on the flawed motivation advanced by the Examiner, this combination appears to be based solely on hindsight reasoning and, as such, cannot be sustained.

III. Conclusion

In light of the forgoing remarks, Appellant respectfully requests that the Board withdraw the obviousness rejection of claims 9-12, 16-20, 22-24, and 26-28. Additionally, Appellant respectfully requests that the Board direct the Examiner to allow instant claims 9-12, 16-20, 22-24, and 26-28.

B. Ground of Rejection No. 2:

The Examiner improperly rejected claims 1-7 under 35 U.S.C. § 103(a) as unpatentable over the Tkacs et al. reference in view of the Bapat reference and the Swales et al. reference. Appellant respectfully traverses this rejection.

Deficiencies of the Rejection

Contrary to the Examiner's assertions, the references fail to disclose each element of claims 1-7. For instance, representative independent claim 1, from which claims 2-7 depend, recites "a plurality of monitoring screens...including representations based upon monitoring data collected...via the data network *from the components in which identifying component data is stored*" (emphasis added). Because the Tkacs et al., Swales et al., and Bapat references fail to disclose such an element, the cited references fail to support a *prima facie* case of obviousness with respect to the instant claims.

In the Office Action, the Examiner set forth the following rationale for his rejection of independent claim 1:

> In regard to independent claim 1, Tkacs discloses a database including component data descriptive of the components and a plurality of language fields including textual labels for component data presentations translated into a plurality of languages (Tkacs Col 6 Lines 60-63 Col 4 Lines 10-67 and Col 5 Lines 1-19) (Tkacs Col 6 Lines 34-39) (Tkacs Col 11 Lines 47-49) (Tkacs Col 1 Lines 12-17); and *a plurality of monitoring screens viewable on the monitoring station and including representations of component designations and component status parameters based upon monitored data collected via the data network from the components in which identifying component data is stored* by the monitoring station (Tkacs Col 7 Lines 17-23 Col 7 Lines 28-38)(Tkacs Col 11 Lines 45-49) (Tkacs Col 12 Lines 56-60) (Tkacs Col 8 Lines 14-16) (Tkacs Col 7 Lines 28-38): wherein the monitoring station is configured to access textual labels in a desired language from the database for displaying the monitoring Screens. (Tkacs Col 7 Lines 28-38) (Tkacs Col 14 Lines 25-27)(Tkacs Col 6 Lines 34-39) (Tkacs Col 11 Lines 5-7) (Tkacs Col 6 Lines 60-63) (Tkacs Col 7 Lines 28-38)
>
> Tkacs does not specifically mention to build a view of the components in real-time based upon the identifying component data and based upon the identifying component data collected from the component. However, Swales mentions that data can be controlled on a real time basis (Swales Col 4 Lines 45-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Swales to Tkacs providing Tkacs the benefit of ensure [*sic*] data is processed in real time to ensure the data is accurate and current.
>
> Tkacs does not specifically mention language fields. However, Bapat mentions fields that can contain sufficient storage that can be allocated (Bapat Col 6 Line 32) It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Bapat to Tkacs providing Tkacs the benefit of allocating fields for storage taught by Bapat Col 6 Lines 32-39.

Office Action mailed December 23, 2005, pages 2-3 (errors in original, emphasis added). As highlighted by the emphasis added in the above passage, the Examiner asserted that the Tkacs et al. reference discloses the recited "plurality of monitoring screens...including representations based upon monitoring data collected...via the data network *from the components in which identifying component data is stored*" (emphasis added) of independent claim 1. This assertion is false.

Rather, as discussed above, the Tkacs et al. reference teaches that all data is stored in memory 44 independent of the components for which the "process diagram" is developed. Moreover, none of the sections cited by the Examiner even hints, let alone teaches, that identifying component data is stored *in the component*. For the Board's convenience, and to highlight the deficiencies of the Tkacs et al. reference and the present rejection, the following quotes include each of the sections of the Tkacs et al. reference cited by the Examiner in support of his allegations with respect to this element:

> **Column 7, lines 17-23:** A "Selection" is made by user action to identify a change in a selection made. A selection can be made by identifying an area of a diagram using a touch screen or peripheral pointer such as a mouse or light pen, and selecting a change in selection for that area. Alternatively, a change in selection can be made for all the members of a group.
>
> **Column 7, lines 28-38:** The monitoring apparatus 20 may be more or less complicated. For example, the apparatus can include feedback control outputs coupled to process actuators (not shown) or can simply monitor and report. In addition to display of process parameters, the system can include maintenance or engineering functions, such as usage monitoring, trend analysis functions or the like, upon which the system can report to the user via a suitably formatted display. In addition to displaying measured values, the system could be arranged to run simulations for assessing the likely result of various changes in operation.
>
> **Column 8, lines 14-18:** The processor's operations including collecting and displaying information are substantially independent of the language used, except that

> the capability of changing dynamically between languages adds slightly to the memory necessary for storing definitions.
>
> **Column 11, lines 43-49:** Finally, FIG. 6 illustrates a preferred embodiment wherein the data or text points are grouped to permit conversion of text or format for a selected subset of display items. In this case, all the data points that fall into a group that can be designated values have been translated to form a partially translated output 76. Other variations are possible and should now be apparent.
>
> **Column 12, lines 56-60:** ...the subset in the second form being different than the first form in at least one of: language, graphical depiction and units of measure, but representing the same said parameter values and process configuration information, according to the second form....

Appellant, respectfully, submits that the foregoing sections in no way disclose, suggest, or even hint at representations based upon data collected *from components in which identifying component data is stored*, as recited in the instant claim. In fact, these sections discuss topics wholly unrelated to the assertion the Examiner is attempting to support. Furthermore, the Swales et al. and Bapat references fail to obviate the deficiencies of the Tkacs et al. reference. Consequently, the cited references do not disclose each and every element of the instant claims. Accordingly, for at least these reasons, the rejection relying on these cited references fails to establish a *prima facie* case of obviousness with respect to claims 1-7.

Furthermore, Appellant respectfully submits that even if, assuming for the sake of argument, the cited references could be interpreted as disclosing all of the recited features, the Examiner has failed to articulate a proper and objectively supported motivation for the piecemeal combination of various teachings of the cited references to reach the pending claims. In combining the Swales et al. reference with the Tkacs et al. reference, the Examiner simply asserted: "It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Swales to Tkacs providing

Tkacs the benefit of ensure [*sic*] data is processed in real time to ensure the data is accurate and current." Office Action mailed December 23, 2005, page 3. Appellant, however, respectfully submits that this motivation is a conclusory statement that is not supported by objective evidence. As noted above with respect to independent claims 9 and 20, the passage of the Swales et al. reference on which the Examiner relies merely teaches that real-time control of a system is possible, and such functionality is already provided by the teachings of the Tkacs et al. reference itself. In short, one skilled in the art would not be motivated to modify the Tkacs et al. reference to achieve a result that is *already produced by* the Tkacs et al. reference. While Appellant appreciates the difficulty faced by the Examiner in avoiding impermissible hindsight reasoning, Appellant respectfully submits that the present rejection appears to be based on such improper reasoning. The rejection fails to set forth any logically supportable rationale as to why one skilled in the art would be motivated to combine the cited references, and the only rationale provided by the Examiner is demonstrably false. The rejection, for at least these reasons in addition to failing to provide each and every element of the claims, fails to support a *prima facie* case of obviousness regarding claims 1-7.

In light of the forgoing remarks, Appellant respectfully requests that the Board withdraw the improper obviousness rejection of claims 1-7. Additionally, Appellant respectfully requests that the Board direct the Examiner to allow the instant claims.

C. **Ground of Rejection No. 3:**

The Examiner improperly rejected claims 8 and 21 under 35 U.S.C. § 103(a) as being unpatentable over the Tkacs et al. reference in view of the Bapat reference and the Bargh et al. reference. Appellant respectfully traverses this rejection.

Deficiencies of the Rejection

Appellant notes that claims 8 and 21 respectively depend from independent claims 1 and 20. As discussed above, the Tkacs et al. reference fails to disclose each element of independent claims 1 and 20. Further, Appellant respectfully submits that the

Bapat and Bargh et al. references do not obviate the deficiencies of the Tkacs et al. reference discussed above with respect to the independent claims. Appellant respectfully notes that the Examiner's present rejection of dependent claims 8 and 21 fails to cite the Swales et al. reference, which the Examiner believed was necessary in rejecting base claims 1 and 20. However, as discussed above, the Swales et al. reference also fails to obviate the deficiencies of the present rejection. As a result, Appellant respectfully asserts that dependent claims 8 and 21 are allowable on the basis of their dependency from a respective allowable independent claim, as well as for the subject matter separately recited in these dependent claims.

In light of the forgoing remarks, Appellant respectfully requests that the Board withdraw the obviousness rejection of claims 8 and 21. Additionally, Appellant respectfully requests that the Board direct the Examiner to allow claims 8 and 21.

D. **Ground of Rejection No. 4:**

The Examiner rejected claims 13-15 and 25 under 35 U.S.C. § 103(a) as unpatentable over the Tkacs et al. reference in view of the Bapat reference and the Swales et al. reference. Appellant respectfully traverses this rejection.

Deficiencies of the Rejection

Appellant notes that each of claims 13-15 and 25 depends from one of independent claims 9 or 20. As discussed above, the Tkacs et al. reference fails to disclose each element of independent claims 9 and 20. Further, Appellant respectfully submits that the Bapat and Swales et al. references do not obviate the deficiencies of the Tkacs et al. reference discussed above with respect to these independent claims. As a result, Appellant respectfully asserts that dependent claims 13-15 and 25 are allowable on the basis of their dependency from a respective allowable independent claim, as well as for the subject matter separately recited in these dependent claims.

In light of the forgoing remarks, Appellant respectfully requests that the Board withdraw the obviousness rejection of claims 13-15 and 25. Additionally, Appellant respectfully requests that the Board direct the Examiner to allow claims 13-15 and 25.

Conclusion

In view of the above remarks, Appellant respectfully submits that the Examiner has provided no supportable position or evidence establishing a *prima facie* case of obviousness with respect to claims 1-28. Consequently, Appellant respectfully submits that all pending claims are in condition for allowance. However, if the Examiner or Board wishes to resolve any other issues by way of a telephone conference, the Examiner or Board is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

Date: May 25, 2006

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8. **APPENDIX OF CLAIMS ON APPEAL**

1. A control and monitoring system including a plurality of control and monitoring components coupled to a monitoring station via a data network, the system comprising:

a database including component data descriptive of the components and a plurality of language fields including textual labels for component data presentations translated into a plurality of languages; and

a plurality of monitoring screens viewable on the monitoring station and including representations of component designations and component status parameters based upon monitored data collected by the monitoring station via the data network from the components in which identifying component data is stored, the screens including textual labels for the representations; wherein the monitoring station is configured to build a view of the components in real-time based upon the identifying component data and to access textual labels in a desired language from the database for display in the monitoring screens based upon the identifying component data collected from the component.

2. The system of claim 1, wherein at least one monitoring screen includes a user viewable menu for selecting the desired language.

3. The system of claim 2, wherein the monitoring station is configured to change textual labels in respective monitoring screen upon a change by a user of the desired language without otherwise altering the monitoring screen.

4. The system of claim 1, wherein the component data in the database includes component parameter settings.

5. The system of claim 1, wherein the component data in the database includes historical event data the each component.

6. The system of claim 1, wherein the component data in the database includes textual data descriptive of each component, and wherein the textual data is translated into the desired language for display.

7. The system of claim 1, wherein the component data in the database includes data representative of an image of each component.

8. The system of claim 1, wherein the monitoring station is configured automatically to poll the components for the component status parameters and to display the updated status parameter representations with currently selected desired language labels.

9. An industrial control and monitoring system comprising:

a plurality of control and monitoring components configured to control or monitor application of electrical power to a load, and including at least data identifying the components stored in the respective components;

a data network coupled to the components for accessing parameter and identity data from the components;

a database including component data descriptive of the components; and a plurality of language fields including textual labels for component data presentations translated into a plurality of languages;

a monitoring station coupled to the data network and configured to access the parameter data and the identifying data from the components; and

a plurality of monitoring representations built in real-time based upon the identifying data and viewable on the monitoring station and including data about components and component status parameters based upon the parameter data, the representations including textual labels from the database in a desired language from the plurality of languages for display in the monitoring screens.

10. The system of claim 9, wherein the database is stored at the monitoring station.

11. The system of claim 9, wherein the monitoring representations include a user viewable menu of selectable languages.

12. The system of claim 11, wherein the monitoring station is configured to access the desired language for the textual labels from the database based upon a user selection made via the menu.

13. The system of claim 9, wherein the textual labels are displayed with component status parameters updated in real time.

14. The system of claim 13, wherein the desired language may be selectively changed by a user in real time without otherwise altering display of real time updated component status parameters.

15. The system of claim 9, wherein the components are configured to store component designation data and to transmit the designation data to the monitoring system upon demand by the monitoring system.

16. The system of claim 9, wherein the component data in the database includes component parameter settings.

17. The system of claim 9, wherein the component data in the database includes historical event data the each component.

18. The system of claim 9, wherein the component data in the database includes textual data descriptive of each component, and wherein the textual data is translated into the desired language for display.

19. The system of claim 9, wherein the component data in the database includes data representative of an image of each component.

20. A method for monitoring status of a system including a plurality of networked electrical components, the method comprising the steps of:

accessing component status and identity data from a plurality of electrical components of a control and monitoring system via a data network, each component storing its respective identity data;

accessing textual labels corresponding to the component status data from a system database, the database including translations of the textual labels in a plurality of languages and component descriptions for the components; and

displaying a plurality of monitoring representations for the components, built in real-time based on the status and identity data, including presentations of component status data and textual labels in a desired language of the plurality of languages accessed from the database.

21. The method of claim 20, wherein the component status data is accessed by a monitoring station through periodic polling of the components by the monitoring station.

22. The method of claim 20, wherein the textual labels are accessed from the database in accordance with predetermined fields of the representations.

23. The method of claim 22, wherein the textual labels are accessed from the database in accordance with a user selection of the desired language.

24. The method of claim 23, wherein the representations include a user viewable menu for selecting the desired language.

25. The method of claim 24, wherein the desired language can be changed in real time by user selection via the menu.

26. The method of claim 20, wherein the component descriptions are displayed in the monitoring representations for the respective components.

27. The method of claim 26, wherein the component descriptions are stored in the database in the plurality of languages.

28. The method of claim 27, wherein the component descriptions are displayed in the monitoring representations in the desired language.

9. **APPENDIX OF EVIDENCE**

N/A

10. **APPENDIX OF RELATED PROCEEDINGS**

N/A